

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0444**

**Sales Tax**

**Calendar Years 1992, 1993, 1994, 1995, and 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Gross Retail Tax – Remittance**

**Authority:** IC 6-2.5-2-1

Taxpayer protests the audit assessment

**II. Tax Administration – Penalty**

**Authority:** IC 6-8-10-1-2.1, 45 IAC 15-11-2

The Department addresses the penalty.

**STATEMENT OF FACTS**

Taxpayer failed to show for a hearing scheduled for Monday, April 24, 2000. The determination is made based upon information contained in the audit file and taxpayer's protest letter dated July 10, 1998. The Department has allowed the taxpayer ample time to provide information.

Taxpayer operates a retail operation under various names and guises. In at least part of the years 1992, 1993, and 1994, the taxpayer had a physical location in Terre Haute, Indiana. Few records were kept or made available to the auditor. Typically the taxpayer has "wholesaled or retailed" clothing and other apparel from two locations and out of her house. Due to lack of records, the auditor made no statements regarding use tax.

The auditor states, that after repeated requests, he was supplied with some records that consisted of income statements based upon bank statements saved or obtained by the taxpayer. The source documents were never made available to him and according to the taxpayer, the records were reconstructed from bank statements and cancelled checks. The taxpayer further stated to the auditor that not every month of every bank account maintained was used to construct these statements. The auditor found it necessary, based upon what was supplied and what was missing, to attribute an amount

that is presumed to be closer to the actual amount. No records were made available for 1992. The auditor attributed 1992 in total and partially for all other years at audit.

On July 27, 1999 the file was returned to the auditor because the taxpayer stated that it had additional information to negate a portion of the assessment. On September 17, 1999 the auditor returned the file to the Legal Division without resolution. The auditor states that the examination of records did not support the taxpayer's oral claim of only \$25,000 to \$50,000 in taxable sales. The additional information and the numerous gaps in the numeric sequence of invoices, without periodic reconciliation, did not allow an adjustment to the assessment.

**I. Gross Retail Tax – Remittance**

**DISCUSSION**

Taxpayer's letter dated July 10, 1998 states it does not owe what the department determined and its accountants have information with the detailed correct information. Taxpayer, however, did not provide documentation except to prolong the hearings that were scheduled three times previously.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration – Penalty**

**DISCUSSION**

Although the taxpayer did not specifically protest the penalty assessed, the department addresses the penalty. Taxpayer failed to file ST-103's returns, collect and remit sales tax.

Taxpayer has not provided reasonable cause for the failure to collect and remit sales tax.

**FINDING**

Taxpayer's protest is denied.

**CONCLUSION**

Taxpayer's protest is denied for issues I and II.